

***IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK***

J.T., an Infant by His Mother and Natural Guardian,
CATHERINE PETER,

Docket No.:1:21-CV-00538-
PKC-LB

Plaintiff,

ANSWER

-against-

IHOP RESTAURANTS LLC, SI GRANITEVILLE PANCAKE
HOUSE INC. d/b/a IHOP, RICHMOND IHOP LLC d/b/a IHOP
and JANE DOE, a fictitious person the identity of whom is
presently unknown,

Defendants.

S I R S:

Defendant RICHMOND IHOP LLC, by and through its attorneys, Mintzer Sarowitz Zeris
Ledva & Meyers, LLP, as and for its Answer to the Complaint herein, respectfully avers as
follows, upon information and belief:

JURISDICTION AND VENUE

1. Answering defendant denies each and every allegation contained in the paragraph
of the complaint herein designated as “1” and respectfully refers all questions of law to this
Honorable Court.

2. Answering defendant denies knowledge or information sufficient to form a belief
as to the allegations contained in paragraph “2” of the complaint.

JURY DEMAND

3. Answering defendant hereby demands a trial by a jury of six (6) persons.

PARTIES

4. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained paragraph “4” of the complaint.

5. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint herein designated as “5” and “6” and respectfully refers all questions of law to this Honorable Court.

6. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “7” and “8” of the complaint.

7. Answering defendant denies each and every allegation contained in paragraph “9” of the complaint.

8. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “10” of the complaint.

9. Answering defendant denies each and every allegation contained in paragraph “11” of the complaint.

10. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint herein designated as “12”, “13” and “14” and respectfully refers all questions of law to this Honorable Court.

11. Answering defendant denies each and every allegation contained in paragraph “15” of the complaint.

12. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “16” of the complaint.

13. Answering defendant denies each and every allegation contained in paragraph “17” of the complaint.

14. Answering defendant denies each and every allegation contained in paragraph “18” of the complaint and respectfully refers all questions of law to this Honorable Court.

15. Answering defendants neither admit nor deny the allegations contained in paragraph “19” of the complaint due to insufficient lack of knowledge.

16. Answering defendant denies each and every allegation contained in paragraphs “20”, “21”, “22” and “23” of the complaint

17. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “24”, “25”, “26” and “27” of the complaint.

BACKGROUND FACTS

18. Answering defendant denies each and every allegation contained in paragraphs “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36” and “37” of the complaint.

19. Answering defendant denies each and every allegation contained in paragraphs “38”, “39”, “40”, “41” and “42” of the complaint.

20. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint herein designated as “43” and “44” and respectfully refers all questions of law to this Honorable Court.

21. Answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint herein designated as “45”, “46” “47”, “48” “49” and “50”.

22. Answering defendant denies each and every allegation contained in paragraphs “51” and “52” of the complaint.

FIRST CAUSE OF ACTION

23. Answering paragraph “53” of the Complaint, answering defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “52” thereof with the same force and effect as if set for the at length herein.

24. Answering defendant denies each and every allegation contained in paragraphs “54”, “55”, “56”, “57”, “58”, “59”, “60” and “61” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

25. That the injuries and/or damages allegedly sustained by the plaintiff was caused, in whole or in part, by the negligence, carelessness, recklessness, comparative negligence and/or other culpable conduct on the part of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

26. If any damages are recoverable against this answering defendant, the amount of such damages shall be reduced by the amount of benefits which plaintiff has or will receive from collateral sources pursuant to the provisions of Civil Practice Law and Rules §4545(c) for any past, present or future cost or expense incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitation services, loss of earnings or any and all other economic loss that was or will, with reasonable certainty, be replaced or indemnified, in whole or in part, by collateral sources.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

27. That plaintiff was aware of the activity in which plaintiff was involved and assumed the risks thereof.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

28. That plaintiff failed to mitigate plaintiff's damages pursuant to law, statute, and agreement and therefore has sustained no damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

29. That the Verified Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

30. That if this answering defendant is found liable, which is specifically denied, such liability is less than or equal to 50% of the total liability of all persons who may be found liable, and therefore, this answering defendant's liability shall be limited to its equitable share, pursuant to Civil Practice Law and Rules Article 16.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

31. This answering defendant alleges that plaintiff's alleged injuries and damages were solely and proximately caused by the intervening negligence, carelessness, gross negligence, willfulness, wantonness, recklessness, and/or intentional conduct of an independent third party.

WHEREFORE, defendant RICHMOND IHOP LLC demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
May 17, 2021

Yours, etc.



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